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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
09/928,437	08/14/2001	Franklin D. Lomax JR.	211473US23	8138	
22850	7590 10/04/2002				
OBLON SPIVAK MCCLELLAND MAIER & NEUSTADT PC			EXAMINER		
1755 JEFFER	FOURTH FLOOR 1755 JEFFERSON DAVIS HIGHWAY			LEO, LEONARD R	
ARLINGTON	I, VA 22202		ART UNIT	PAPER NUMBER	
			3743		
			DATE MAIL ED: 10/04/2002		

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary    Examiner   Leonard R. Leo   3743			<i></i>				
Examiner Leonard R, Leo 3743 The MAILING DATE of this communication appears on the cover sheet with the correspondence address Period for Reply  A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ② MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.  Extendion of this may be available under the provisions of 37 CFR 1.136(o). In an event, however, may a reply be timely filled sites 37(6) MONTH's from the midle test bits 1845 (of) days, a reply whith the statutory meriod will supply and will expire 37 (K) MONTH's from the midle test bits 1845 (of) days, a reply whith the statutory meriod will supply and will expire 37 (K) MONTH's from the mailing date of his communication to the provision of the control statutory period will supply and will expire 37 (K) MONTH's from the mailing date of his communication there are supplied to the control statutory period will supply and will expire 37 (K) MONTH's from the mailing date of his communication to the communication there are supplied to the control statutory period will supply and will expire 37 (K) MONTH's from the mailing date of his communication to the communication of the communication to the communication		Application No.	Applicant(s)				
Leonard R. Leo   3743		09/928,437	LOMAX ET AL.				
Period for Repty  A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ③ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.  Execution of time may be available under the previous of 3 f ZFR 1.13(g), in ne event, however, may a reply be timely filled after SIX (9) MCNPTS from the malling date of this communication.  Execution of time may be available under the previous of 3 f ZFR 1.13(g), in ne event, however, may a reply be timely filled after SIX (9) MCNPTS from the malling date of this communication.  I Responsive to communication (1) the communication of the previous of the communication is the substitute of the substitute of the communication.  Palava to reply the principle of the communication (1) the practice under £x peries Quayle, 1935 C.D. 11, 453 O.G. 213.  Disposition of Claims  4) Since this application is in condition for allowance except for formal malters, prosecution as to the merits is closed in accordance with the practice under £x peries Quayle, 1935 C.D. 11, 453 O.G. 213.  Disposition of Claims  4) Claim(s) 1-16 is/are pending in the application.  4) Claim(s) 1-16 is/are pending in the application.  4) Claim(s) 1-16 is/are objected to the communication.  5) Claim(s) 1-16 is/are objected to.  6) Claim(s) 1-16 is/are objected to.  7) Claim(s) 1-16 is/are objected to.  7) Claim(s) 1-16 is/are objected to.  8) The proposed drawing corrected drawing as the communi	Office Action Summary	Examiner	Art Unit				
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.  Exercises of time may be available under the provisions of 37 CFR 1.35(a). In ne event, however, may a reply be timely filed  Exercised of time may be available under the provisions of 37 CFR 1.35(a). In ne event, however, may a reply be timely filed  Exercised of time may be available under the provisions of 37 CFR 1.35(b). In ne event, however, may a reply be timely filed  Exercised of time may be available under the provisions of 37 CFR 1.35(a). In the statutory minimum of theiry (30) days will be considered timely.  If the period for reply is specified above, the maximum statutory previous viril apply and vivil expire 31X (5) MCNT-is term to their confidence of timely.  If the period for reply is specified above, the maximum statutory previous viril apply and vivil expire 31X (5) MCNT-is term to their confidence of timely.  If the period for reply is specified above, the maximum statutory previous viril apply and vivil expire 31X (5) MCNT-is term to their confidence of timely.  Application term adjustment. See 37 CFR 1.704(b).  Status  1)							
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.  Elementary of this mapy be written and the provision of 3 CFR 1.35(g). In an event, however, may a reply be timely filed  Elementary of this mapy be validable under the provisions of 3 CFR 1.35(g). In an event, however, may a reply be timely filed  If the period for reply specified above is less bian hirty (30) days, a reply whilin the satisfactory priced will be part of the period for reply specified above is less bian hirty (30) days, a reply whilin the satisfactory priced will be part of the period for reply whilin the satisfactory priced will be part of the period for reply whilin the satisfactory priced will be part of the commendation of the satisfactory of the period of the priced will be priced by whilin the satisfactory priced will be priced by the period of the priced by whilin the satisfactory priced by the period of the period of the priced by whilin the satisfactory priced by the period of the perio		ears on the cover sheet with the	correspondence address				
2a)  This action is FINAL. 2b)  This action is non-final.  3   Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213.  Disposition of Claims  4)  Claim(s) 1-18 is/are pending in the application.  4a) Of the above claim(s) 17 and 18 is/are withdrawn from consideration.  5)  Claim(s) is/are allowed.  6)  Claim(s) is/are allowed.  6)  Claim(s) is/are objected to.  8)  Claim(s) are subject to restriction and/or election requirement.  Application Papers  9)  The specification is objected to by the Examiner.  10)  The drawing(s) filed on is/are: al_ accepted or bl_ objected to by the Examiner.  Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  11)  The proposed drawing correction filed on is: al_ approved bl_ disapproved by the Examiner.  12)  The oath or declaration is objected to by the Examiner.  Priority under 35 U.S.C. §§ 119 and 120  13)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  a)  All b)  Some * c)  None of:  1.  Certified copies of the priority documents have been received in Application No  3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  * See the attached detailed Office action for a list of the certified copies not received.  14)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  a)  The translation of the foreign language provisional application has been received.  15)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.  Attachment(s)	<ul> <li>THE MAILING DATE OF THIS COMMUNICATION.</li> <li>Extensions of time may be available under the provisions of 37 CFR 1.13 after SIX (6) MONTHS from the mailing date of this communication.</li> <li>If the period for reply specified above is less than thirty (30) days, a reply If NO period for reply is specified above, the maximum statutory period we Failure to reply within the set or extended period for reply will, by statute,</li> <li>Any reply received by the Office later than three months after the mailing</li> </ul>	36(a). In no event, however, may a reply be to within the statutory minimum of thirty (30) day ill apply and will expire SIX (6) MONTHS from cause the application to become ABANDON	imely filed  ys will be considered timely.  n the mailing date of this communication.  ED (35 U.S.C. § 133).				
3   Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213.  Disposition of Claims  4) ✓ Claim(s) is is/are pending in the application.  4a) Of the above claim(s) 17 and 18 is/are withdrawn from consideration.  5) □ Claim(s) is/are allowed.  6) ☑ Claim(s) is/are objected to.  7) □ Claim(s) is/are objected to.  8) □ Claim(s) are subject to restriction and/or election requirement.  Application Papers  9) □ The specification is objected to by the Examiner.  10) □ The drawing(s) filed on is/are: a) □ accepted or b) □ objected to by the Examiner.  Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  11) □ The proposed drawing correction filed on is: a) □ approved b) □ disapproved by the Examiner.  If approved, corrected drawings are required in reply to this Office action.  12) □ The oath or declaration is objected to by the Examiner.  Priority under 35 U.S.C. §§ 119 and 120  13) □ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  a) □ All b) □ Some * c) □ None of:  1. □ Certified copies of the priority documents have been received.  2. □ Certified copies of the priority documents have been received in Application No  3. □ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  * See the attached detailed Office action for a list of the certified copies not received.  14) □ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  a) □ The translation of the foreign language provisional application has been received.  15) □ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.	1) Responsive to communication(s) filed on 19 J	<u>luly 2002</u> .					
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### **DETAILED ACTION**

#### Election/Restrictions

Applicant's election with traverse of the invention of Group I in Paper No. 3 is acknowledged. The traversal is on the ground(s) that (1) there would be no serious search burden, (2) different classification is normal, (3) no basis for the materially different process of the product. This is not found persuasive because (1) search burden is not the sole consideration in a restriction requirement, especially when the inventions have been clearly shown to be independent and distinct. The Examiner determines search burden, not applicants. (2) Searching two statutory different classes of invention due to their divergent subject matter is a burden. (3) Allegations of different processes or products need not be documented. (MPEP 806.05(f))

The requirement is still deemed proper and is therefore made FINAL.

Claims 17-18 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim.

# Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6 and 8-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Courchesne. Regarding claim 16, the presence of method limitations in an apparatus claim are given no patentable weight in this instance. It has been held that a recitation with respect to the

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manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Ex parte Masham, 2 USPQ2d 1647 (1987).

# Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Courchesne in view of Uggerby.

Courchesne discloses all the claimed limitations except a resilient seal.

Uggerby discloses a tube and shell heat exchanger comprising a plurality of tubes 9 disposed within housing 8, and a plurality of baffles 24 with resilient seal 25 for the purpose of supporting the baffle within the housing and minimizing fluid bypass.

Since Courchesne and Uggerby are both from the same field of endeavor and/or analogous art, the purpose disclosed by Uggerby would have been recognized in the pertinent art of Courchesne.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to employ in Courchesne a resilient seal for the purpose of supporting the baffle within the housing and minimizing fluid bypass as recognized by Uggerby.

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### Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry of a general nature, relating to the status of this application or clerical nature (i.e. missing or incomplete references, missing or incomplete Office actions or forms) should be directed to the Technology Center 3700 Customer Service whose telephone number is (703) 306-5648.

Any inquiry concerning this Office action should be directed to Leonard R. Leo whose telephone number is (703) 308-2611.

LEONARD R. LEO PRIMARY EXAMINER ART UNIT 3743

October 1, 2002